

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK BRADY,

No. C 05-4270 SI (pr)

Petitioner,

ORDER OF DISMISSAL

v.

GEORGE LAYMAN,
Commissioner; et al.,Respondents.
_____ /

Mark Brady has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges the revocation of his parole. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

Prisoners in state custody who wish to challenge either the fact or length of their confinement in federal court by a petition for writ of habeas corpus are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue they seek to raise in federal court. 28 U.S.C. § 2254(b),(c); Granberry v. Greer, 481 U.S. 129, 133-34 (1987). Brady has not done so; nor has he presented any exceptional circumstances to excuse his doing so. See id.

Brady's petition shows that he has not filed a petition for review or a petition for writ of habeas corpus in the California Supreme Court. The California Supreme Court has not been given

1 a fair opportunity to rule on the merits of his claims concerning his parole revocation. Brady
2 must file a state habeas petition (or a petition for review, if it is not too late) and give the
3 California Supreme Court a fair opportunity to rule on the merits of all his claims before
4 presenting his claims in a federal habeas petition.

5 For the foregoing reasons, the petition is DISMISSED without prejudice to Brady filing a
6 new habeas action after available state judicial remedies are exhausted. The dismissal also is
7 without prejudice to Brady filing a motion for relief in Valdivia v. Schwarzenegger, E. D. Cal. No.
8 Civ. S-94-0671 LKK\GGH if he believes there has been a violation of an order in that action. In
9 light of the dismissal of this action for failure to exhaust, Brady's motion to treat the petition as
10 an emergency situation is DENIED. (Docket # 7.)

11 The in forma pauperis application is DENIED. (Docket # 2.)

12 The clerk shall close the file.

13 IT IS SO ORDERED.

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15 DATED: December 2, 2005



SUSAN ILLSTON
United States District Judge